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Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Aquidneck Management Associates, Inc.--  
Entitlement to Costs

**File:** B-250479.2

**Date:** March 17, 1993

Wayne A. Keup, Esq., Dyer, Ellis, Joseph & Mills, for the requester.

Richard A. Couch, Esq., Department of the Army, for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protester is not entitled to reimbursement of the costs of filing and pursuing its protest where agency implemented corrective action within 17 working days after the protest was filed.

### DECISION

Aquidneck Management Associates, Inc. requests that our Office declare the firm entitled to recover the reasonable costs of filing and pursuing its protest concerning request for proposals (RFP) No. DAAK60-92-R-2026, issued by the Department of the Army for deployable field kitchens.

We deny the request.

On September 24, 1992, Aquidneck filed a protest in our Office objecting to the Army's decision to exclude its proposal from the competitive range. Aquidneck also argued that the RFP contained defective specifications concerning transportability of the units, and that the Army had failed to conduct meaningful discussions with the protester. On October 20, 17 working days after Aquidneck filed its protest, the agency issued amendment No. 0004 clarifying the RFP's transportability requirement, and notified Aquidneck that its proposal would be included within the competitive range. We dismissed Aquidneck's protest on October 27.

Aquidneck argues that it is entitled to recover its protest costs because the agency unreasonably delayed taking corrective action. According to the protester, during discussions

on September 9, Aquidneck apprised the agency of the RFP's allegedly defective specifications pertaining to transportability of the units, and requested that the RFP be clarified. The protester thus argues that since it first apprised the Army of its protest grounds during discussions on September 9, we should measure the promptness of the agency's corrective action from that date, rather than from September 24, when it filed the protest.

Where an agency takes corrective action prior to our issuing a decision on the merits, we may declare the protester entitled to recover the reasonable costs of filing and pursuing the protest. 4 C.F.R. § 21.6(e) (1992); Metters Indus., Inc.--Entitlement to Costs, B-240391.5, Dec. 12, 1991, 91-2 CPD ¶ 535. This provision is intended to allow the award of costs when agencies unduly delay taking corrective action in the face of a clearly meritorious protest. Oklahoma Indian Corp.--Claim for Costs, 70 Comp. Gen. 558 (1991), 91-1 CPD ¶ 558. A protester is not entitled to costs where, under the facts and circumstances of a given case, an agency takes prompt corrective action in response to a protest. Id.

Here, the Army amended the RFP to clarify the transportability requirement and decided to include Aquidneck's proposal in the competitive range 17 working days after the firm filed its protest in our Office. We view such action, taken early in the protest process, as precisely the kind of prompt reaction to a protest that our Regulation is designed to encourage. It provides no basis for a determination that the payment of protest costs is warranted. See Leslie Controls, Inc.--Claim for Costs, B-243979.2, July 12, 1991, 91-2 CPD ¶ 50 (protester not entitled to award of protest costs where agency took corrective action within 1 month after protest was filed); Oklahoma Indian Corp.--Claim for Costs, supra (corrective action taken by an agency within 2 weeks of when the protest was filed does not constitute undue delay in taking corrective action).

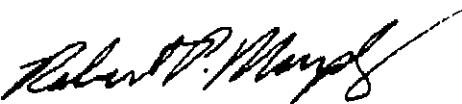
To the extent that Aquidneck argues that it informed the agency of the alleged specification defects during discussions, the Competition in Contracting Act of 1984 limits our protest jurisdiction to written objections to a solicitation, proposed award, or award of a contract filed with our Office. 31 U.S.C. §§ 3551(1), 3552 (1988). Our authority to declare entitlement to protest costs extends to parties whose protests to our Office support a finding that a procurement statute or regulation was violated. 31 U.S.C. § 3554(c)(1). The modification of our Bid Protest Regulations to provide for the possibility of an award of costs where an agency takes corrective action in response to a protest was not intended to ensure the fairness of agency-level processes; that is the responsibility of the procuring

agency involved. See, e.g., R.J. Sanders, Inc.--Claim for Costs, B-245388.2, Apr. 14, 1992, 92-1 CPD ¶ 362 (protester not entitled to protest costs where agency took corrective action within 1 month after protest was filed with our Office, even though protester had previously filed an agency-level protest concerning the same matter). Rather, the purpose of our Regulation is to ensure fair treatment of those protesters to our Office who make substantial investment of time and resources in pursuit of clearly meritorious protests here, but who do not have the opportunity to recoup their costs because of agency corrective actions. See Propulsion Controls Eng'g--Entitlement to Costs, B-244619.2, Mar. 25, 1992, 92-1 CPD ¶ 306. The fact that Aquidneck may have raised its objections to the agency during discussions is of no significance to our finding that the agency promptly took corrective action after Aquidneck filed its protest here.

The protester further asserts that it is entitled to its costs because the agency compelled Aquidneck to file a protest in order to preserve the agency's funding for the project for the additional time required to amend the RFP. According to the protester, although the Army acknowledged the allegedly defective specification, it did not amend the RFP earlier because the agency was concerned over the impending expiration of fiscal year (FY) 1992 funds obligated for the project. Had the agency acted when Aquidneck first brought the RFP's alleged defects to its attention, the protester argues, the Army would have had ample time to correct the RFP and Aquidneck would not have been required to file its protest.

The Army states that concerns over the expiration of FY 1992 funds played no role in its decision, and we have no reason to question the agency's statement in this regard. Moreover, contrary to Aquidneck's suggestion that funds for the project were about to expire, the 1992 Department of Defense Appropriations Act, Pub. L. No. 102-172, title IV, 105 Stat. 1150, 1164 (1991), specifically states that funds appropriated for the type of project involved here are to remain available for obligation until September 30, 1993. Aquidneck's argument that the agency somehow "used" Aquidneck to preserve its funding for the project is thus without merit.

The request is denied.

  
for James F. Hinchman  
General Counsel